

EXHIBIT 15

In the Matter Of:

Hammons vs University of Maryland Medical System

1:20-CV-02088-DKC

DR. MICHAEL J. MARION

April 06, 2022



ESQUIRE
DEPOSITION SOLUTIONS

800.211.DEPO (3376)
EsquireSolutions.com

DR. MICHAEL J. MARION
Hammons vs University of Maryland Medical System

April 06, 2022

1

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MARYLAND

3 -----:
4 JESSE HAMMONS, :
5 :
6 Plaintiff, :
7 vs. :Case No.
8 :1:20-CV-02088-DKC
9 UNIVERSITY OF MARYLAND :
10 MEDICAL SYSTEM CORPORATION, :
11 :
12 UMSJ HEALTH SYSTEM, LLC, :
13 :
14 UNIVERSITY OF MARYLAND ST. :
15 JOSEPH MEDICAL CENTER, LLC, :
16 Defendants. :
17 -----:

11 Towson, Maryland

12 Wednesday, April 6, 2022

13 Video Conference Deposition of:

14 DR. MICHAEL J. MARION

15 called for oral examination by counsel for
16 Plaintiff, pursuant to notice, in Towson, Maryland,
17 before Sheri C. Stewart, RPR, RMR, of Esquire
18 Deposition Solutions, a Notary Public in and for the
19 State of Maryland, beginning at 12:01 p.m., when
20 were present on behalf of the respective parties:

21
22 Job No. J8078711

1 A P P E A R A N C E S:

2 On behalf of Plaintiff:

3 JONATHAN HERMANN, ESQUIRE
4 ANDREW D. COHEN, ESQUIRE
5 ARON FISCHER, ESQUIRE
6 JOSHUA M. GOLDMAN, ESQUIRE
7 Patterson, Belknap, Webb & Tyler, LLP
8 1133 Avenue of the Americas
9 New York, New York 10036
(212) 336-2000
JHermann@pbwt.com
ACohen@pbwt.com
AFischer@pbwt.com
JGoldman@pbwt.com

10 On behalf of Defendants:

11 DANIELLE VRABIE, ESQUIRE
12 Sheppard, Mullin, Richter & Hampton, LLP
13 30 Rockefeller Plaza
14 New York, New York 10112
(212) 634-3081
DVrabie@sheppardmullin.com

15 Also present: George Ellis, videographer
16
17
18
19
20
21
22

1 need to break now, we can always take a brief break. 12:33:12

2 A No, I'm fine. 12:33:16

3 Q All right. I'm going to shift focus to 12:33:17

4 hysterectomies. 12:33:20

5 A Okay. 12:33:21

6 Q Could you explain to me what a 12:33:22

7 hysterectomy is? 12:33:23

8 A Removal of the uterus. 12:33:24

9 Q Are hysterectomies performed at SJMC? 12:33:27

10 A They are. 12:33:30

11 Q Approximately how frequently? 12:33:32

12 A Across the board it's one of the more 12:33:37

13 common GYN surgeries that occurs. 12:33:39

14 Q A few times a week? 12:33:46

15 A A few times a week, maybe a hundred a year 12:33:47

16 so that's twice a week. 12:33:50

17 Q As a matter of course are you made aware 12:33:53

18 when a patient is scheduled to receive a 12:33:54

19 hysterectomy at SJMC? 12:33:56

20 A No, I'm not. 12:33:59

21 Q Is a scheduled hysterectomy posted on the 12:34:01

22 status board? 12:34:03

1 A So the way you said scheduling, what I 12:36:05
2 would tell you is I think we're construing, when we 12:36:07
3 talk about scheduling, and life threatening, we're 12:36:10
4 talking about acuity, which is a measure of time. 12:36:16
5 So when something is life threatening in my world, I 12:36:20
6 think of it as emergent, we have to do the case 12:36:24
7 within 24 hours or the patient's going to die. 12:36:28
8 That's life threatening in my world. Fibroids are 12:36:31
9 not -- 12:36:35
10 BY MR. HERMANN: 12:36:38
11 Q I'm sorry? 12:36:38
12 A Fibroids are not life threatening, they're 12:36:38
13 scheduled electively because they can be scheduled 12:36:40
14 this month or next month without being life 12:36:43
15 threatening, are they an indication, medically 12:36:46
16 necessary as you were saying, are they an indication 12:36:51
17 for surgery for hysterectomy? Yeah, they are. Is 12:36:55
18 it of medical necessity? It may be. But if you can 12:36:57
19 schedule it electively, meaning that it doesn't have 12:37:02
20 to be done this week, it could be done next week or 12:37:04
21 the week after, that's scheduled electively and 12:37:07
22 that's not life threatening. I'm not sure if that 12:37:10

1 Q Understood. If we can just focus on that 12:42:24
2 2018 case for a moment. Do you recall anything 12:42:29
3 specific about, about that procedure? 12:42:33

4 A Yes. 12:42:37

5 Q What do you recall? 12:42:39

6 A That there was a question of whether the 12:42:45
7 case could be performed because the, the patient 12:42:47
8 identified as transgender. 12:42:56

9 Q And do you remember the outcome of that 12:43:01
10 case? 12:43:03

11 A I believe the case was performed. 12:43:04

12 Q Shifting gears just briefly. Are you 12:43:14
13 familiar with the ethical and religious directives 12:43:17
14 of the Catholic health services? 12:43:20

15 A Yes. 12:43:22

16 Q And I'm just going to refer to them as 12:43:23
17 ERDs. Would you understand if I refer to them as 12:43:24
18 ERDs? What do you know about the ERDs? 12:43:27

19 A They are a list of directives from the 12:43:33
20 U.S. Conference of Catholic Bishops that help govern 12:43:37
21 what may and may not be done in Catholic hospitals. 12:43:42

22 Q And what's the basis for your 12:43:48

1 Q Putting aside procedures involving 12:51:05
2 transgender patients, as you eluded to before. Are 12:51:07
3 you aware of any hysterectomy that has not been 12:51:09
4 performed at SJMC because of the ERDs? 12:51:12

5 A I'm sorry, aside from the 2018 case? 12:51:20

6 Q Correct. 12:51:24

7 A And then there's the case that you're 12:51:25
8 referring to. Besides those two cases, no. 12:51:27

9 Q Do you understand, and summarize the 12:51:45
10 conversation we're having, putting aside procedures 12:51:49
11 for transgender patients, it's true that there's no 12:51:51
12 procedure in place at SJMC for reviewing whether a 12:51:53
13 hysterectomy complies with the ERDs, correct? 12:51:56

14 MS. VRABIE: Objection. You can answer, 12:52:01
15 Dr. Marion, if you understood the question. 12:52:09

16 A So there was concern after, in 2020, with 12:52:16
17 the Hammons' case. There was concern from the 12:52:24
18 admission integration that we needed to try to 12:52:33
19 ensure that the posting department had a way, 12:52:40
20 because again, they are not medical people, they are 12:52:43
21 administrative, had a way of knowing the cases 12:52:47
22 should or shouldn't be posted. So in Epic, there 12:52:52

1 were flags put in so that certain keywords like 12:52:59
2 abortion would create a, an alert to let them know 12:53:02
3 that we, this case cannot be canceled, it needs 12:53:09
4 further clarification. 12:53:13

5 BY MR. HERMANN: 12:53:16

6 Q And transgender was one of those alerts, 12:53:16
7 correct? 12:53:20

8 A Actually, I think it wasn't transgender, I 12:53:21
9 think it was just gender. 12:53:24

10 Q I see. And so before Mr. Hammons' 12:53:26
11 scheduled procedure, was there any formal procedure 12:53:31
12 at SJMC for evaluating whether hysterectomies comply 12:53:37
13 with the ERDs? 12:53:41

14 A No, not that I'm aware of. 12:53:42

15 Q And we discussed back and forth a bit the 12:53:44
16 term life threatening. Is it your understanding 12:53:48
17 that the term life threatening doesn't have a 12:53:50
18 particular meaning with respect to the ERDs? 12:53:53

19 MS. VRABIE: Objection. You can answer, 12:53:57

20 Dr. Marion. 12:54:00

21 A Again, for me, life threatening means 12:54:03
22 acuity and it connotes time, so I don't honestly 12:54:05

DR. MICHAEL J. MARION
Hammons vs University of Maryland Medical System

April 06, 2022

51

1 Q Dr. Marion, without going into the 13:09:05
2 substance of the conversation, did you have any 13:09:07
3 conversations with counsel over break? 13:09:09

4 A No. 13:09:12

5 Q We were discussing before the break a bit 13:09:16
6 about the ERDs. Is it your understanding that the 13:09:18
7 ERDs prohibit Catholic hospitals from participating 13:09:22
8 in gender transitions or what I'll call 13:09:25
9 gender-affirming treatments for transgender 13:09:28
10 patients? 13:09:31

11 A That is my understanding. 13:09:31

12 Q And when did you learn about this 13:09:34
13 restriction? 13:09:37

14 A Again, you know, I became an employed 13:09:42
15 physician in 2012 and as part of our employment 13:09:46
16 contract there was a clause that we had to follow 13:09:54
17 the ERDs and so I believe that that's when I first 13:09:59
18 went through the ERDs, you know, more fully and 13:10:04
19 gained that understanding. You know, previously I 13:10:10
20 had been operating at St. Joe's since 1998, but 13:10:14
21 again, in private practice hand surgeon, you know, 13:10:19
22 those issues wouldn't have come up or affected me. 13:10:26

1 But when I was then hired by the St. Joseph medical 13:10:30
2 group, as an employed physician and I was reviewing 13:10:36
3 my contract and I saw that in my contract, I did 13:10:39
4 look over the ERDs and understood that that was part 13:10:42
5 of the flavor of the ERDs, so to speak. 13:10:46

6 Q And so when you say flavor, was it your 13:10:51
7 understanding reading the ERDs that Catholic 13:10:54
8 hospitals could not participate in any 13:10:57
9 transgender-related surgeries of any kind, that is 13:11:01
10 gender-affirming surgeries? 13:11:06

11 A That was my -- 13:11:08

12 MS. VRABIE: Objection. 13:11:08

13 A Sorry. That was my understanding, yes. 13:11:09

14 BY MR. HERMANN: 13:11:14

15 Q And we discussed earlier, too, that you 13:11:14
16 recalled a case in 2018 of a canceled or initially 13:11:18
17 canceled hysterectomy; is that right? 13:11:22

18 A Correct. 13:11:24

19 Q I'm going to attempt to share my screen 13:11:27
20 here. The document is UMMS395 which I will 13:11:28
21 introduce, I believe we're at exhibit, Plaintiff's 13:11:32
22 Exhibit 10. 13:11:36

1 (Whereupon, Exhibit No. 10 was marked for 13:11:37
2 identification.) 13:11:37

3 BY MR. HERMANN: 13:11:44

4 Q Dr. Marion, do you see UMMS395 up on the 13:11:48
5 screen? 13:11:54

6 A Yes. 13:11:55

7 Q One moment. 13:11:57

8 MS. VRABIE: Yeah, I note that it's also a 13:11:58
9 multipage exhibit and I'd like to have the 13:12:00
10 chance for the witness to look through the 13:12:03
11 entire document, so. 13:12:05

12 MR. HERMANN: Sure. Why don't we do -- 13:12:10
13 why don't we do -- why don't we do this. Why 13:12:11
14 don't I try and drop the file into the chat and 13:12:16
15 Dr. Marion will see if that works. Let's see. 13:12:18

16 THE WITNESS: So what I am doing 13:12:53
17 downloading this file? Is that what I'm 13:12:54
18 supposed to do? 13:12:57

19 MS. VRABIE: Yeah, if you download the 13:12:58
20 file then you'll be able to open it and scroll 13:12:59
21 through it and read it. 13:13:04

22 MR. HERMANN: I'll still share my screen 13:13:09

1 if that's all right just to make sure that 13:13:11
2 we're on the same page literally and 13:13:13
3 figuratively. Let us know when you open that 13:13:15
4 document up. 13:13:24

5 THE WITNESS: I'm actually having a little 13:13:34
6 trouble with it, honestly. Oh, I got it. 13:13:36
7 Okay. It's open. 13:13:41

8 BY MR. HERMANN: 13:13:42

9 Q I'll give you a minute just to skim 13:13:43
10 through it and refresh your recollection. 13:13:45

11 A Sure. All right. Yes. Thank you. 13:13:48

12 Q I'm on what's stamped as page UMMS399, it 13:14:31
13 is page five of the PDF. Do you see that? 13:14:36

14 A Yes. 13:14:42

15 Q Do you recall receiving this e-mail from 13:14:42
16 Kate Barbara on October 11, 2018, with the subject 13:14:45
17 line Adashek 11, slash, 12? 13:14:48

18 A Yes. I mean, I don't recall it. I know I 13:14:52
19 reviewed it so, yes. 13:14:54

20 Q Do you recall who Kate Barbara is? 13:14:58

21 A Yes. 13:15:00

22 Q And who is she? 13:15:02

1 A She's the head of surgical business 13:15:03
2 administrator who's also in charge of the posting 13:15:09
3 department. 13:15:12

4 Q And you mentioned earlier that the 13:15:14
5 administrative department is responsible for 13:15:17
6 training the schedulers, correct? 13:15:19

7 A Correct. 13:15:22

8 Q And that's with respect to identifying 13:15:23
9 certain procedures that might be flagging, correct? 13:15:25

10 A Yes. 13:15:30

11 Q Do you recall the details about what she 13:15:30
12 calls this, quote, case? That she's identifying in 13:15:33
13 this e-mail? 13:15:37

14 A Yes. 13:15:37

15 Q And we started discussing it a little 13:15:38
16 earlier, but if you could just tell me what you 13:15:40
17 remember about this case. 13:15:42

18 A There was a question about whether the 13:15:46
19 case could be posted because the patient was 13:15:49
20 identified as transgender and as I had mentioned, 13:15:52
21 our nonclinical posting department is trained to 13:15:59
22 understand the ethical and religious directives so 13:16:04

1 that raised a red flag for them and so they 13:16:08
2 contacted Kate, their supervisor, to see if we could 13:16:10
3 or should be posting this case at St. Joe's. 13:16:15

4 Q And so your understanding is that they 13:16:20
5 flagged this case based on their understanding of 13:16:22
6 what the ERDs permit and do not permit? 13:16:25

7 A That's right. 13:16:28

8 Q Do you recall forwarding this e-mail chain 13:16:33
9 to Dr. Smyth, CC'ing Keith Riddle? 13:16:34

10 A I do. 13:16:40

11 Q Okay. Who is Thomas Smyth? 13:16:41

12 A He's the CEO of the hospital. 13:16:45

13 Q And he's a medical doctor? 13:16:48

14 A He is. He's a urologist by training. 13:16:50

15 Q And we discussed Keith Riddle a little bit 13:16:53
16 before. Is he a medical doctor? 13:16:56

17 A No. 13:16:57

18 Q Do you recall writing to Dr. Smyth that 13:16:58
19 you, quote, didn't think that there was a problem, 13:17:02
20 unquote, in doing a hysterectomy? 13:17:05

21 A Yes. 13:17:07

22 Q What did you mean by that? 13:17:07

1 A I didn't think that this case was in 13:17:10
2 violation of the ERDs. 13:17:16

3 Q And why didn't you think it was a 13:17:20
4 violation of the ERDs? 13:17:22

5 A If my recollection is correct, I clarified 13:17:24
6 with the surgeon, Dr. Adashek, who was posting the 13:17:29
7 case, to ask what the symptoms were for which 13:17:33
8 Dr. Adashek was posting the hysterectomy and I was 13:17:40
9 told that it was abnormal uterine bleeding or 13:17:44
10 dysmenorrhea. We -- I'm sorry. 13:17:47

11 Q Go ahead. 13:17:52

12 A No, no. 13:17:53

13 Q Go ahead. I didn't want to cut you off. 13:17:53
14 You were talking about your conversation with 13:17:56
15 Dr. Adashek. 13:17:58

16 A Yes. So upon finding out that the 13:17:59
17 diagnosis was abnormal uterine bleeding I felt that 13:18:02
18 that was an indication for hysterectomy, that does 13:18:07
19 not run afoul of the ERDs. 13:18:12

20 Q And did you speak to Dr. Adashek before 13:18:16
21 you received this e-mail from Ms. Barbara? 13:18:20

22 A No. 13:18:22

1 Q So you called him after you received this 13:18:23
2 e-mail, correct? 13:18:28

3 A Yeah. I believe I called him. I don't 13:18:29
4 think that there was an e-mail, I think I called 13:18:32
5 him. 13:18:34

6 Q And just to be clear, Dr. Adashek was the 13:18:35
7 surgeon scheduling this procedure, correct? 13:18:37

8 A Correct. 13:18:40

9 Q Did you know Dr. Adashek before this 13:18:42
10 procedure? 13:18:45

11 A Yes. 13:18:46

12 Q Has he performed hysterectomies at SJMC 13:18:47
13 before? 13:18:51

14 A Yes. 13:18:51

15 Q You write here that the, quote, the 13:18:54
16 scheduling department was questioning whether we 13:18:56
17 could do the surgery in a Catholic institution. And 13:18:58
18 you're referring of course to SJMC, correct? 13:19:01

19 A Yes. 13:19:05

20 Q And by we, you're referring to the doctors 13:19:05
21 and the staff affiliated with SJMC? 13:19:07

22 A I was referring to the institution itself 13:19:13

1 being governed by ERDs. 13:19:16

2 Q And you said that the scheduling 13:19:21
3 department is instructed to check whether procedures 13:19:22
4 are compliant with the ERDs? 13:19:25

5 A They are trained such that when a 13:19:28
6 procedure comes up, it may be running afoul of the 13:19:31
7 ERDs, they're to bring that to their supervisor, 13:19:35
8 which was the case here, yeah. 13:19:38

9 Q To your knowledge, has scheduling ever 13:19:40
10 raised a question about whether any other 13:19:44
11 hysterectomy could take place at SJMC due to the 13:19:45
12 ERDs? 13:19:50

13 A In fact, this was the only case that has 13:19:52
14 ever been brought to me by the scheduling 13:19:54
15 department. 13:19:57

16 Q Was this case brought to you, not 13:20:00
17 including plaintiff's case, brought to you where 13:20:02
18 that case concerned a scheduled hysterectomy? 13:20:08

19 A No. In fact, just to be clear, the 13:20:12
20 plaintiff's case didn't come to me either. 13:20:14

21 Q Understood. I'm going to scroll up a 13:20:19
22 little bit to Mr. Riddle's response to you. He 13:20:25

1 says, quote, no gender reassignment surgeries are to 13:20:29

2 be done in a Catholic institution. Do you see that? 13:20:32

3 A Yes. 13:20:36

4 Q And what did you understand him to mean by 13:20:38

5 that? 13:20:40

6 A The procedures that are being done for 13:20:41

7 gender affirmation cannot be performed in a Catholic 13:20:44

8 institution because it runs afoul of the ERDs, which 13:20:48

9 I need to paraphrase, and again, I'm no expert on 13:20:56

10 the ERDs, but altering God given normal anatomy and 13:20:58

11 taking out normal organs is not condoned by the 13:21:02

12 ERDs. 13:21:05

13 Q And again when you say normal organs 13:21:07

14 you're referring to healthy tissue? 13:21:09

15 A Healthy tissue, yeah. 13:21:11

16 Q And Mr. Riddle writes further, we could 13:21:16

17 not do the gender reassignment surgery but if there 13:21:20

18 was another medical reason for something that, all 13:21:23

19 caps, might, could be considered. Do you see that? 13:21:27

20 A Yes. 13:21:31

21 Q And what do you understand or what did you 13:21:32

22 understand him to mean by that? 13:21:34

1 A Well, in my e-mail I had said that I don't 13:21:35
2 think that there's a problem with this case because 13:21:39
3 in this particular case there was a diagnosis of 13:21:42
4 dysmenorrhea or abnormal uterine bleeding which is a 13:21:47
5 diagnosis that we, meaning St. Joseph Medical 13:21:51
6 Center, performed hysterectomies for. 13:21:55

7 Q And nevertheless, if we scroll up just a 13:21:59
8 little bit, this e-mail from Dr. Smyth, he says, I 13:22:01
9 don't think we can do this case, right? 13:22:06

10 A That's what he said. 13:22:11

11 Q And is it your understanding that SJMC 13:22:15
12 could not do this case because the patient was 13:22:18
13 transgender? 13:22:21

14 A It was my understanding that Dr. Smyth was 13:22:24
15 concerned that this particular case was running 13:22:27
16 close to the red line that St. Joe's is not allowed 13:22:33
17 to cross. 13:22:38

18 Q And what -- 13:22:39

19 A Based on the ERDs. 13:22:40

20 Q As you understand it, what is that red 13:22:44
21 line? 13:22:45

22 A St. Joe's can't remove normal organs and 13:22:48

1 can't do gender-affirming surgery for transgender 13:22:50
2 patients. 13:22:54

3 Q Dr. Smyth further instructs here to, for 13:22:58
4 Mr. Riddle to forward to Gail so that she can review 13:23:08
5 for medical necessity and primary diagnosis, 13:23:12
6 correct? 13:23:16

7 A Yes. 13:23:17

8 Q And that's Dr. Cunningham the CMO? 13:23:18

9 A Correct. 13:23:21

10 Q Does Dr. Cunningham have final say over 13:23:22
11 whether a surgery can take place? 13:23:26

12 A She would have, yes, she, I report to her, 13:23:30
13 she would supercede with my judgment, yes. 13:23:35

14 Q And does anybody supercede hers? 13:23:38

15 A I suppose that she can discuss that with 13:23:42
16 the CEO and the ethics committee. 13:23:45

17 Q And so she also may have final say about 13:23:51
18 whether the surgery's compliant with the ERDs, 13:23:54
19 correct? 13:23:57

20 A Correct. 13:23:58

21 Q So based on this e-mail chain it's 13:24:05
22 accurate to say that a hysterectomy cannot be 13:24:07

1 performed at SJMC if the primary reason for that 13:24:09
2 surgery is gender affirming, correct? 13:24:12

3 A Correct. 13:24:15

4 Q But if the primary reason for a 13:24:17
5 hysterectomy was unrelated to the gender-affirming 13:24:18
6 surgery then the hysterectomy could be performed, 13:24:22
7 correct? 13:24:24

8 A Right. If there's another diagnosis and, 13:24:25
9 you know, so just to put it in, you know, more 13:24:27
10 simple terms, if the organ was diseased, so to 13:24:29
11 speak, if there was some diagnosis of abnormality 13:24:34
12 then, yes, if it's something that we do 13:24:36
13 hysterectomies for then we would be able to do it 13:24:39
14 regardless of the patient being transgender or not. 13:24:42

15 Q And in this case the primary diagnosis 13:24:47
16 that you note was abnormal uterine bleeding, 13:24:48
17 correct? 13:24:51

18 A Correct. 13:24:52

19 Q And that is a medical indication for 13:24:53
20 receiving a hysterectomy? 13:24:57

21 A Yes. 13:24:59

22 Q And in fact, that's what you wrote, that 13:25:01

1 the primary diagnosis was in fact abnormal bleeding, 13:25:02
2 right? 13:25:06

3 A Correct. 13:25:07

4 Q Do hysterectomies scheduled at SJMC with a 13:25:07
5 medical indication of abnormal uterine bleeding 13:25:12
6 typically require your approval? 13:25:13

7 A No. 13:25:17

8 Q Before this had they ever required your 13:25:18
9 approval? 13:25:20

10 A This was the only case that I can recall 13:25:22
11 of a hysterectomy coming to me for my approval. 13:25:24

12 Q What about Dr. Cunningham or Dr. Smyth's 13:25:30
13 approval? Are you aware of any others before this 13:25:33
14 case? 13:25:36

15 A Before this case, no, I'm not. The only 13:25:37
16 other case I know is the plaintiff's case in 2020 13:25:40
17 that came to Dr. Cunningham. But again -- 13:25:43

18 Q And what about -- 13:25:48

19 A Just to clarify, I'm a chief, while I'm a 13:25:50
20 chief of surgery, there may have been instances that 13:25:54
21 have been brought forward to the chief of OB-GYN 13:25:57
22 that I would not be privy to. 13:26:03

1 Q Understood. And we talked before about 13:26:04
2 how hysterectomies were fairly routine; is that 13:26:11
3 correct? 13:26:14

4 A They're one of the more common diagnoses. 13:26:16
5 They're one of the more common procedures that GYNs 13:26:17
6 do in the hospital, yes. 13:26:22

7 Q And in fact, you write this in 2018 that 13:26:23
8 hysterectomies are a routine procedure? 13:26:25

9 A Yes. 13:26:29

10 Q And that was true when this e-mail was 13:26:30
11 sent? 13:26:32

12 A Yes. 13:26:33

13 Q That was true in 2020? 13:26:35

14 A Yes. 13:26:37

15 Q And so you can't identify any other 13:26:44
16 medical indications or pre-operation diagnoses for 13:26:49
17 hysterectomies that would have required your 13:26:51
18 approval, right? 13:26:53

19 A Correct. 13:26:58

20 Q So it's true here that by reposting the 13:27:05
21 surgery with the diagnosis abnormal uterine bleeding 13:27:08
22 that surgery could in fact be performed at SJMC, 13:27:10

1 think January 13th. 13:54:02

2 Q And you had no further discussions about 13:54:05
3 the cancellation after this e-mail thread? 13:54:07

4 A Again, there were, there were discussions 13:54:12
5 about the process, there were process issues that we 13:54:15
6 were concerned about, you know, why was this case 13:54:17
7 still on the status board listed as a surgical case 13:54:21
8 when it was canceled. If there was an issue with 13:54:24
9 posting, that's when we, that, when I say we, that's 13:54:28
10 when the posting department worked with Epic to put 13:54:33
11 in an alert that if, you know, to highlight, I think 13:54:37
12 the word was gender, if there was a case posted that 13:54:40
13 had the term gender in it, it would cause an alert 13:54:42
14 to say we need more information, please contact the 13:54:46
15 supervisor before posting this case. So there were 13:54:51
16 process issues, but, no, I did not discuss the 13:54:54
17 actual Mr. Hammons' case with Dr. Adashek after this 13:54:59
18 incident. 13:55:04

19 Q Did you discuss the specifics of 13:55:06
20 Mr. Hammons' case scheduling a procedure aside with 13:55:08
21 anyone else at SJMC? 13:55:12

22 A I don't believe so, no. Again, I wasn't 13:55:14

1 A No, it was my understanding that the 14:02:03
2 patient was transgender. 14:02:04

3 Q We can look back at Ms. Barbara's e-mail. 14:02:10
4 She speaks of making the system, quote, mistake 14:02:13
5 proof. What do you understand her to mean by that? 14:02:18

6 A Yes. So that's language that we use in 14:02:24
7 the, that comes from the Toyota Production System to 14:02:29
8 become a high reliability organization much like the 14:02:34
9 airline industry where we want to put in processes 14:02:37
10 to help avoid error. 14:02:42

11 Q And she references a BPA? 14:02:46

12 A Yes. That's the alert that I was 14:02:50
13 referring to that pops up on the screen that Epic 14:02:52
14 uses to notify whoever's using the, the EHR, that 14:02:59
15 there is an issue. 14:03:06

16 Q And the process you described, the 14:03:08
17 scheduling process, that alert would appear on the 14:03:10
18 scheduler's screen, correct? 14:03:14

19 A Yes. 14:03:16

20 Q And what does BPA stand for? 14:03:17

21 A Oh, you know what, I am blanking on the 14:03:21
22 name but it's an alert. It's an Epic term for an 14:03:23

1 alert. 14:03:27

2 Q So it's an Epic specific term? 14:03:30

3 A Yeah. 14:03:32

4 Q Does best practice advisory sound right? 14:03:32

5 A Yes, yes. 14:03:39

6 Q And now we were looking at the chart again 14:03:42

7 and I'm going to zoom in. And I know it's a little 14:03:45

8 gray but under column C, can you see it says 14:03:50

9 canceled? 14:03:54

10 A Yes. 14:03:55

11 Q Does that indicate whether the surgeries 14:03:56

12 were posted? 14:03:57

13 A Again, I know that the second case was 14:04:00

14 definitely posted. I don't know if the first case 14:04:02

15 actually was on the status board or if the case was 14:04:07

16 just canceled out of the system. I don't know what 14:04:12

17 that refers to. 14:04:15

18 Q But either way it was somehow entered into 14:04:17

19 the system, correct? 14:04:19

20 A It was entered into the system. In other 14:04:22

21 words, if someone from the, an outside office 14:04:25

22 contacted the scheduling department, gave that 14:04:31

1 information, they entered the information into the 14:04:34
2 system and at some point it was then canceled, but I 14:04:36
3 don't know if it was actually put on the schedule. 14:04:40

4 Q And the purpose of the BPA would avoid any 14:04:44
5 of this from being entered into Epic in the first 14:04:48
6 place, correct? 14:04:50

7 A It would alert the schedulers, the purpose 14:04:51
8 of the BPA is to alert the schedules that they need 14:04:54
9 more information, that they need to contact their 14:04:57
10 supervisor to find out more about the case before it 14:05:00
11 could be scheduled. 14:05:04

12 Q And if through that discussion it's 14:05:07
13 determined that the procedure cannot be performed at 14:05:12
14 SJMC, then the procedure wouldn't take place; is 14:05:15
15 that correct? 14:05:18

16 A Not at SJMC. 14:05:20

17 Q To your knowledge, was this BPA ever 14:05:24
18 implemented? 14:05:27

19 A Yes, I believe it is. 14:05:28

20 Q Have any hysterectomies been flagged since 14:05:32
21 2020? 14:05:34

22 A Again, not that I'm aware of. But it 14:05:36

1 seems like this comes up every two years so we're 14:05:43
2 good. 14:05:47

3 Q Are you aware of any other mechanism that 14:05:47
4 flags these preop diagnoses? 14:05:49

5 A Electronic mechanisms? 14:05:53

6 Q Any mechanism to flag something in a preop 14:05:57
7 diagnosis? 14:05:59

8 A No. I mean, it's this and like I said, 14:06:00
9 the training that the surgical schedulers receive. 14:06:03

10 Q So you're not familiar with any other 14:06:11
11 specific BPA as to preop diagnosis, are you? 14:06:15

12 A For hysterectomies, no. 14:06:21

13 Q What about for any procedure? 14:06:24

14 A Again, I don't know if there's anything in 14:06:31
15 there, I mean, look, as I told you, in order to post 14:06:33
16 a case, the provider, the surgeon, needs to be 14:06:38
17 credentialed and privileged for the procedure. We 14:06:42
18 don't do abortions, so based on that, no, no 14:06:45
19 provider would have the privilege to do, to do an 14:06:49
20 abortion at St. Joe's. I don't know if there's any 14:06:52
21 BPA that alerts for language around abortion or 14:06:55
22 sterilization. 14:07:00

1 Q So to your knowledge, this is the only BPA 14:07:01

2 that creates an alert based on the preop diagnosis? 14:07:05

3 A Right. 14:07:09

4 Q And that BPA flags the term gender? 14:07:11

5 A According to this e-mail, that's my 14:07:15

6 understanding, yes. 14:07:16

7 Q And your understanding is, in fact, that 14:07:18

8 has been implemented? 14:07:20

9 A Yes. 14:07:22

10 Q Do you as chief of surgery receive any of 14:07:26

11 these warnings when certain preop diagnoses are 14:07:28

12 entered into Epic? 14:07:32

13 A No, so the BPA is, is contextual, right, 14:07:34

14 it comes up only for the people who are entering the 14:07:39

15 information. I wouldn't get an alert from posting 14:07:42

16 that a BPA fired. 14:07:45

17 Q So it's only the, the schedulers who are 14:07:47

18 entering this information? 14:07:50

19 A Yes. 14:07:52

20 Q We could take a break now or in about ten 14:08:06

21 minutes. Which would you prefer, Dr. Marion? 14:08:12

22 A I'm fine to continue. 14:08:15